IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10622 of 1998

with
SPECIAL CIVIL APPLICATIONS NOS. 516 TO 522 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR
AND
HONOURABLE MR JUSTICE D.P. BUCH

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4x. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :

5. Whether it is to be circulated to the Civil Judge? : NO

VIRA VEJA SONDARVA
Versus
DY CONSERVATOR OF FOREST

Appearance:
MR H.M.MEHTA ,SR. ADVOCATE WITH MS VASAVDATTA BHATT
for Petitioner
MR S.N.SHELATM ADDL.ADV.GENERAL WITH Mr H.M BHAGAT for
State-authorities.
MR M.R.Shah, Addl.Stg.Counsel for Central Govt.

CORAM : MR JUSTICE C.K.THAKKER
and
MR.JUSTICE D.P.BUCH

Date of decision: /02/2000

CAV JUDGEMENT

Per Thakker, J.:

All these petitions have been filed for an appropriate writ, direction or order quashing and setting aside the notification dated February 6, 1975 (Annexure D ), Government Resolution dated October 6, 1992 (Annexure G ) as amended on August 18, 1997 as also order passed by the Deputy Collector on April 19 , 1976 (Annexure E) and the order passed by the Deputy Conservator of Forest,dated December 8 , 1998 (Annexure U) and for an appropriate writ, direction or order directing the respondents to process the papers for regularisation of encroachments made by the petitioners as per Government policy dated March 1, 1960 as amended from time to time. A prayer is also made directing the Deputy Conservator of Forest and Secretary to Government of Gujarat , Forest Department to regularise encroachment under the provisions of Forest (Conservation) Act, 1980. Interim relief during the pendency of the petitions for maintenance of status quo was also prayed.

Earlier, petitions came up for admission before the learned Single Judge of this Court and on December 11, 1988, notice was issued. It also appears that thereafter, constitutional validity of Forest (Conservation) Act, 1980 (hereinafter referred to as `the Act') was challenged and hence, the matters were placed before the Division Bench.

The case of the petitioners was that they are agricultural labourers. Erstwhile bilingual State of Bombay issued a resolution on March 1, 1960 laying down policy for disposal of cultivable forest land to Scheduled tribes and scheduled castes. State of Gujarat being successor to the erstwhile bilingual State of Bombay was bound to act as per the said resolution . The resolution enjoined upon Collectors, in consultation of revenue authorities and forest officers, to ear mark cultivable forest lands not required for afforestation for disposal to members of SC/ ST and other backward communities.

It is the allegation of the petitioners that at the behest of non-S/C, S/T and other backward class communities, a proposal was submitted to the State Government to declare the area as reserved/ protected forest. Said action, as alleged by the petitioners, was

taken only with a view to deprive the members of ST/ SC and other backward class people of the land to which they were otherwise entitled as per the resolution of the erstwhile bilingual State of Bombay. According to the petitioners, they were not aware of any decision taken in pursuance of the above proposal and also notification said to have been issued under the Indian Forest Act, 1927 and they came to know for the first time about such notification when a copy of the said notification was tendered by the State of Gujarat before the Supreme Court in IA Nos. 279-281 and 300 of 1998 in WP (Civil) No. 202 of 1995. Present petitions are,therefore, filed for the reliefs in the petitions.

The matters were placed before the learned Single Judge. The learned Single Judge in the interim order,dated December 11, 1998 referred the background of previous litigation in which the matter was dealt with by the Division Bench in SCA No. 654 of 1997 and companion matters. The Division Bench of this Court (Coram: R.A.Mehta, Actg. C.J. and N.N. Mathur,J.) dismissed the petition on July 9, 1997. Relying on the decision of the Supreme Court in T.N. Godavarman Thirumulkpad vs. Union of India and others, (1997) 2 SCC 267, the Division bench held that no relief could be granted to the petitioners by the High Court.

In the light of the said decision of the Supreme Court, Division bench in para 4 of the order observed as under:

> "It is for the parties to approach the Supreme Court and obtain appropriate clarifications or interpretation of the Supreme Court order rather than agitating this question in this Court or in different courts."

It was submitted before the Division Bench that the petitioners were poor and it would be difficult for them to approach the Supreme Court. The Division Bench,however, observed that it had no doubt that if the petitioners would approach the Supreme Court Legal Aid Committee or other such agencies, appropriate legal aid would be provided to them. Division Bench, however, did not find any good ground to entertain the petitions at that stage and they were accordingly dismissed. Interim relief which was granted earlier was continued till January 31, 1998 so as to enable the petitioners to approach the Supreme Court.

It appears that the petitioners actually approached the

Supreme Court by filing IA Nos. 279- 281 and 300 of 1998 in WP (Civil) No. 202 of 1995. The Supreme Court heard several interim applications including interim applications filed by the petitioners and disposed them of on July 29, 1998. Relevant part of the said order pertaining to IA Nos. 279-281 and 300 of 1998 reads as under :

IA Nos. 279-281 and 300:

We have heard learned counsel; for the parties in these applications. The applicants were served with a notice dated 13th January 197 by the Range Forest officer calling upon them to remove their encroachments within 24 hours of the receipt of the notice, as it was found that they had unlawfully trespassed into the forest land. Instead of showing cause to the range forest officer, the applicants rushed to the High court of Gujarat through various Special civil applications. By an order dated 0th July 1997, the Division Bench of the High court dismissed the Special Civil Applications with the observation that they did not find any good ground to entertain those petitions "at this stage". Since, the applicants had rushed to the High court against the issuance of notice by the Forest Range Officer without having given any response to the notice, the High court rightly dismissed their Special civil applications. We find no fault with the order of the High Court dated 9th July 1997.

Learned counsel for the applicants submits that the applicants belong to socially and economically backward classes and that they would show cause to the Range forest officer against their eviction and may be granted some time to present their case to the Range forest officer against the notice dated 13th January 1998. He further the present applications is necessary in view of the provisions of the Act. We agree. In the interest of justice, we grant applicants two weeks' time to show cause to the Range forest officer against the notice dated 13th January 1997. Mr. Dave, learned Senior Counsel, appearing for the State of Gujarat submits that in the interest of justice and to be fair to the applicants, the State shall not take steps to

forcibly dispossess the applicants during the aforesaid period of two weeks to enable them to approach the Forest Range Officer. We record his submission.

With the aforesaid directions, IAs, are disposed of."

We have heard at considerable length, Mr. H. M. Mehta, Sr. advocate for Ms Vasavdatta Bhatt and Mr. S. N.Shelat,learned Addl. Advocate General instructed by Mr. Bhagat for the State and Mr. M.R.Shah for Union of India.

Several contentions were raised by Mr. Mehta for the petitioners. He submitted that State of Gujarat was bound by the policy decision taken by erstwhile bilingual State of Bombay and its resolution dated March 1, 1960 which obliged State of Gujarat to implement the said policy. In not doing so, the State has acted arbitrarily and unreasonably. He also submitted that cultivation in forest land is not totally prohibited but permission of the Central Government before such cultivation is required under law. The petitioners have sought such permission by making representation to the Central Government. Central Government, however, did not entertain such representation inter alia observing that the petitioners cannot make representation to the Central Government directly , as they were required to make such representation to the Central Government through proper channel viz.through the State Government. Mr. Mehta submitted that the petitioners , therefore, made a representation to the State Government so that it can be forwarded to the Central Government which would take appropriate decision on such representation. State Government, however, failed to forward the said representation to the Central Government. Learned counsel submitted that an anomalous situation has been created by the respondent authorities. On one hand, appropriate authority to take decision is the Central Government but when the representation was made to it, said Government did not entertain the application on the ground that it ought to have been forwarded through the State Government, and when it was made to the State Government, it refused to forward the representation to the Central Government. Such action would ,therefore, obviously be arbitrary, illegal and appropriate writ deserves to be issued to the State Government directing it to forward the representation of the petitioners to the Central Government. Mr. Mehta also submitted that

it is also not true that the area is forest area and that cultivation would adversely affect wild life as contended by the respondents. According to him, the land said to have been in possession of the petitioners is all around surrounded by cultivable lands and human habitation and hence, the ground put forward by the respondents for refusing to regularise possession of the petitioners is ill founded and misconceived. It was also submitted that there is an error apparent on the face of record committed by the Deputy Conservator of Forest in passing the order dated August 21, 1998 (Annexure `O' to the petition) wherein, it was stated that as per the order passed by the Supreme Court in IA Nos. 279-281 and 300 of 1998, petitioners were called upon to produce evidence in support of their title over the land, but the petitioners failed to produce any such evidence in respect of the land in question and hence, they were liable to be evicted. According to the learned counsel, the approach adopted by the authority was not legal, valid and proper inasmuch as it was never the case of the petitioners that they were owners of the land and that they had, in their possession, title deeds , as understood under the general law such as Transfer of Property Act. Learned counsel submitted that they were in possession and occupying the land since last many years and as per the policy of the State Government, their possession was required to be regularised. Authorities thus, in the submission of the learned counsel, proceeded in wrong direction and rejected the claim of the petitioners which was illegal and erroneous. Mr. Mehta further submitted that the land was earmarked for grant to members of SC/ ST and other backward classes and no action could thereafter be taken which would deprive the petitioners and other similarly situated persons of their rights, without issuing show cause notice, calling for explanation and observing principles of natural justice. The impugned action on that ground also, deserves to be set aside. Finally, he submitted that even if it is assumed that the order passed by the Deputy Conservator of Forest is legal and in accordance with law, he had no power , authority or jurisdiction to evict the petitioners and to direct them to vacate the land and hand over peaceful possession to the authorities. It was contended that such a power has not been conferred on the Deputy Conservator of Forests and the order is illegal, unlawful , de hors the Act and deserves to be set aside by this Court. Mr. Mehta, therefore, prayed that the petitins should be allowed by directing the respondent authorities to regularise possession of the petitioners and/or to forward the representation to the Central Government and by issuing

appropriate direction to the Central Government to regularise the possession of the petitioners.

Mr. Shelat, learned Addl. Advocate General for the State authorities and Mr. M.R.Shah ,learned Additional Standing counsel for the Central Government, on the other hand, supported the action of the authorities. So far as State Government is concerned, Mr. Shelat submitted that in accordance with law, actions were taken against the petitioners and such actions were held to be legal, valid and lawful not only by the Division bench of this Court in the previous litigation but also by the Supreme Court. He, therefore, submitted that the petitions filed by the petitioners are not maintainable at law and they deserve to be dismissed only on that ground. He further submitted that the State authorities have acted according to law and no illegality can be said to have been committed by them in not forwarding the representation of the petitioners to the Central Government. He submitted that possession of the petitioners could be regularised only in accordance with law. In the instant case, according to the learned counsel, since land was forest land and it cannot be cultivated, State Government did not think it legal and proper to forward the representation made by the petitioners to the Central Government for regularisation. Mr. Shelat in this connection , relied on an affidavit filed by the Deputy Conservator of Forests, Gir West Region, Junagadh, wherein, it is stated that the land is situated in Junagadh area i.e. in eastern belt and resolution of the State Government dated October 6, 1992 prescribing conditions of regularisation for cultivation would not be applicable to the eastern belt. In the affidavit , dated July 7, 1999, it was further stated:

> "..this area is part of the protected Gir Forests, which is the last home of surviving, `gene pool' of Asiatic lions, and if encroachers are regularised in this area, it becomes a precedence and habitat of lions will be under threat."

Mr. Shelat submitted that this is relevant and germane consideration which the State Government was bound to consider and in fact, it weighed with the State Government for not forwarding the representation of the petitioners to the Central Government and no fault can be found against such action. He also submitted that in the previous litigation, the Supreme Court held that possession of the petitioners was unlawful and illegal. He, therefore, submitted that the petitioners are not

entitled to regularisation. Regarding possession, however, he fairly conceded that the petitioners cannot be deprived of possession without due process of law. But in view of the fact that action of the State authorities cannot be held to be illegal, unlawful , arbitrary or otherwise unreasonable, the prayer of the petitioners to regularise their possession or direction to the State Government to forward their representation to the Central Government cannot be accepted.

Mr. M.R.Shah appearing for the Central Government also supported the State Government. He submitted that the Government of India had not received any proposal from the Government of Gujarat for regularisation of encroachment by the petitioners. According to Mr. Shah,the State Government rightly considered the provisions of the Indian Forest Act and did not think it proper to forward the representation of the petitioners to the Central Government. Satisfaction by the State Government is a condition precedent for forwarding of representation to the Central Government, and as the State Government was not satisfied, no illegality can be said to have been committed by the State Government in not forwarding the representation or by the Central Government in not taking any action, and the petitioners have no right to make any grievance.

We have considered the rival contentions of the parties. In our opinion, all the petitions are required to be allowed but partly. So far as prayer of regularisation by the State Government/ Central Government is concerned, in our opinion, no such prayer can be granted. Apart from the fact that in the instant case, action of the State Government as well as the Central Government cannot be said to be contrary to law,in Godavarman Thirumulkapad, the Supreme Court has issued certain general directions to all the States. After considering `great significance of the points involved in the matter relating to protection and preservation of forests throughout the country' , the Supreme Court considered it necessary to issue directions to the Central Government as well as to the State Governments. In para 5, general directions were issued to State Governments as under:

"I. General:

1. In view of the meaning of the word "Forest" in the Act, it is obvious that prior approval of the Central Government is required for any non forest activity within the area of any "forest".

In accordance with section 2 of the Act,all on going activity within any forest in any State throughout the country,without the prior approval of the Central Government, must cease forthwith., It is, therefore, clear that the running of saw mills of any kind including veneer or ply wood mills, and mining of any mineral are non forest purposes and are,therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie in violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

2. In addition to the above, in the tropical wet ever green forests of Tirap and Chandglang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms. from its border,in Assam,should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.

3. The felling of trees in all forest is to remain suspended except in accordance with the Working Plans of the State Governments, as approved by the Central Government. In the absence of any Working Plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest department of the State Government or the State Forest Corporation.

4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North Eastern State to any other St ate of the country either by rail, road or water ways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.

5. Each Statement should constitute within one month an Expert Committee to:

(i) identify areas which are "forests" irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

(ii) identify areas which were earlier forests ut stand degraded, denuded or cleared; and

(iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

6. Each State Government should within two months,file a report regarding:

(i) the number of saw mills, vener and plywood mills actually operating within the State, with particulars of their real ownership;

(ii) the licensed and actual capacity of these mills for stock and sawing;

(iii) their proximity to the nearest forest;

(iv) their source of timber.

7. Each State Government should constitute within one month,an Expert Committee to assess:

(i) the sustainable capacity of the forests of the State qua saw mills and timber based industry';

(ii) the number of existing saw mills which can safely be sustained in the State;

(iii) the optimum distance from the forest, qua that State, at which the saw mill should be located.

8. The Expert Committees so constituted should be requested to give its report within one month of being constituted.

9. Each State Government would constitute a committee comprising of the Principal Chief

Conservator of Forest and another Senior officer to oversee the compliance of this order and file status reports."

We are not concerned with other States in these petitions and therefore, it is not necessary to make mention of those directions.

In paras 6,7 and 8, the Supreme Court stated:

"6. The earlier orders made in these matters shall be read , modified whereever necessary to this extent. This order is to continue until further orders. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the central or any State Government or any court (including High Court) or Tribunal.

7. We also direct that notwithstanding the closure of any saw mills or other wood-based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason.

8. We are informed that the Railway authorities are still using wooden sleepers for laying tracks. The Ministry of Railways will file an affidavit giving full particulars in this regard including the extent of woods consumed by them, the source of supply of wood, and the steps taken by them to find alternatives to the use of wood."

From the above directions, it is further clear that the said order was to remain in operation until further orders. The order has to be complied with by all concerned notwithstanding any order at variance made or might be made hereafter by any authority including Central or State Government or any Court including High Court or Tribunal.

In our opinion, therefore, the prayers of the petitioners for regularisation of land in their favour cannot be granted either by the State Government or by the Central

Government. Likewise, prayer of the petitioners to direct State Government/ Central Government to consider the representation of the petitioners for regularisation of possession of land also cannot be granted. In our opinion, the considerations which weighed with the State Government cannot be said to be faulty, extraneous, arbitrary and unreasonable inasmuch as the land is not included in eastern belt and Government resolution dated October 6, 1992 is not applicable to Junagadh district which is situated in south-western belt of the State. State authorities have also relied on the fact that Gir Forest was protected forest which is the last home of surviving, `gene pool' of Asiatic lions. In the opinion of the State authorities, if encroachments are regularised in the said area, precedence and habitat of lions will be under threat. Such considerations, in our considered opinion, cannot be said to be arbitrary, extraneous or otherwise unreasonable.

In our view, Mr. Shelat is also right in submitting that in the previous litigation, this Court dismissed all the petitions and the said order was not interfered with by the Supreme Court in IAs. Nos. 279-81 and 300 of 1998. From the facts, it is clear that notices were issued to the petitioners by the Range Forest Officer calling upon them to remove their encroachments within 24 hours as it was found that they had unlawfully trespassed into forest land. Division Bench did not consider it proper to interfere with such notices and did not entertain petitions "at that stage" i.e. at the stage of issuance of notice and dismissed the petitions. The Supreme Court also noted that the counsel for the applicants (petitioners before the High court) submitted that they belonged to socially and economically backward classes and they would show cause to the Range Forest Officer against their eviction and might be granted some time to present their case to the Range Forest Officer against the notice dated January 12, 1997. Agreeing with the said submission, the Supreme Court granted two weeks' time in the interest of justice to the applicants to show cause to the Range Forest Officer against the notice dated January 12, 1997. Supreme Court also noted that senior counsel appearing for the State of Gujarat submitted that the State Government would not take steps to forcibly dispossess the applicants during the said period of two weeks to enable the applicants/petitioners to approach the Range Forest Officer. Interim applications were accordingly disposed of.

In view of the aforesaid order of the Supreme Court and in the light of the observations made in Godavarman

Thirumulkapad, in our opinion, no error of law can be said to have been committed by the respondents in not regularising possession of the petitioners and no such direction can be issued either to the State Government or to the Central Government to regularise possession of the petitioners or to consider their cases for such regularisation. Since no such regularisation can be made in accordance with law and in the light of the directions issued by the Supreme Court in T.N.Godavarman Thirumulkapad as well as in IA Nos. 279-281 and 300 of 1998, the prayer made by the petitioners regarding regularisation and/or consideration of their case for regularisation cannot be accepted. The contentions raised by the learned counsel for the petitioners must,therefore, be negatived.

Regarding possession, however, as fairly stated by Mr. Shelat, the authorities will not dispossess the petitioners except in accordance with law and to that extent, prayer made by the petitioners deserves to be granted.

For the foregoing reasons, in our opinion, all the petitions deserve to be partly allowed and they are accordingly allowed. So far as prayer for regularisation of possession of the petitioners is concerned, no writ, order or direction can be issued either to the State Government or to the Central Government. It is, however, directed that the petitioners will not be dispossessed by the respondents except in accordance with law. Rule is made absolute to the aforesaid extent. In the facts and circumstancesa, there shall be no order as to costs.

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parekh